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IRAN: EXPLANATORY NOTE ON AMNESTY INTERNATIONAL'S USE OF THE TERM "EXTRAJUDICIAL EXECUTIONS" IN REFERENCE TO 1988 PRISON MASSACRES

This explanatory note provides additional information on Amnesty International's characterization of the 1988 prison massacres in Iran as "extrajudicial executions" in its December 2018 report *Blood-soaked secrets: Why Iran's 1988 prison massacres are ongoing crimes against humanity*. The note briefly discusses the terms "summary executions" and "extrajudicial executions" and their application to the 1988 prison massacres. It further addresses the criminal justice implications of the characterization of the 1988 prison massacres as "extrajudicial executions", including for judicial officials in Iran who were involved in the 1988 prison massacres.

This explanatory note is not a stand-alone document and should be read together with the report.

CHARACTERIZATION OF 1988 PRISON MASSACRES AS EXTRAJUDICIAL EXECUTIONS

There has been an evolution in the terminology Amnesty International uses to characterize the 1988 prison massacres. Previously, the organization used only the term "summary executions" to describe the killings. Following extensive research and legal analysis, it has, since 2016, used the term "extrajudicial executions". As set out below, this development is significant from a criminal justice perspective. However, it is not intended to challenge the previous characterization of the 1988 prison massacres as "summary executions".

There is no international treaty which defines the categories of "extrajudicial" and "summary" executions, and the distinctions between these terms and their use by intergovernmental organizations, NGOs and others have sometimes been inconsistent.

Amnesty International defines "extrajudicial execution" as the unlawful and deliberate killing of a person carried out by order of a government or with its complicity or acquiescence.¹ Typically extrajudicial executions are carried out with no pretence of legality. However, Amnesty International considers that the term "extrajudicial execution" also includes cases when a person is killed by the state following summary and arbitrary proceedings that violate the most basic and fundamental judicial guarantees and therefore cannot in any meaningful sense be considered to be the outcome of a judicial process.

Amnesty International's December 2018 report explained in detail why it reached the conclusion that the proceedings before the "death commissions" that led to the mass executions of 1988 did not comply with any due process standards or judicial guarantees and were so summary and arbitrary that they could not be considered to constitute actual judicial proceedings.

The committees, which survivors refer to as "death commissions", bore no resemblance to a court:

- They did not operate within existing legislation;
- They were not concerned with establishing the guilt or innocence of "defendants" regarding an internationally recognized criminal offence;

¹ For more information, see Amnesty International, *14-Point Program for the Prevention of Extrajudicial Executions* (Index: POL 35/003/1993), 7 April 1993, <https://www.amnesty.org/en/documents/pol35/003/1993/en/>

- Prisoners were not told why they faced these questions or that their answers could condemn them to death. Some in fact misunderstood the purpose of the session, believing that they were appearing before a pardon committee;
- Prisoners were not informed that they were condemned to death until shortly before their executions; sometimes they only learned about their impending fate when they were given a pen and piece of paper and told to write down their last wishes. Even then, they did not know when and how they would die until they were lined up before a firing squad or nooses were put around their necks; and
- There was no possibility of appeal at any point during the process.

Amnesty International therefore considered that the mass executions were both “summary” and “extrajudicial” in nature.

Amnesty International used primarily the term “extrajudicial execution” in this report to emphasize, based on its factual and legal findings, its refutation of the untruthful claims of the Iranian authorities that the mass executions of 1988 followed trials that may have admittedly fallen short of some international fair trial standards (as many trials do around the world) but were, nevertheless, judicial proceedings.

Also, the organization deemed it important to express its legal conclusion that the mass executions constituted crimes under international law in themselves, regardless of whether they formed part of a widespread or systematic attack on the civilian population and therefore constituted crimes against humanity. Authoritative sources on international law have consistently used the term “extrajudicial execution” when making the argument that arbitrary deprivation of life can amount to crimes under international law.

SUSPECTS IN POSITIONS OF POWER

The characterization of the 1988 prison massacres as “extrajudicial executions” does not shift criminal responsibility away from members of the judiciary involved in the “death commissions”. On the contrary, their involvement in these commissions places them under suspicion of criminal responsibility for crimes under international law.

Amnesty International’s report explained in detail that judicial and prosecution officials participated in the deliberate unlawful killing of political dissidents in 1988, pursuant to at least one fatwa issued by Rouhollah Khomeini, the then Supreme Leader, which ordered that in each province, a three-man committee be established, comprised of judicial, prosecution and intelligence officials.

The report identified and analysed evidence indicating that the following officials participated in the “death commissions”:

- **Alireza Avaei:** He was tasked with participating in the Dezful “death commission” as the prosecutor general of Dezful and is currently the minister of justice.
- **Hossein Ali Nayyeri:** He acted as the Shari’a judge in the Tehran “death commission”. He was promoted to the position of the deputy head of Iran’s Supreme Court in 1989 and remained in this post until September 2013. He was subsequently appointed as the head of the Supreme Disciplinary Court for Judges, a position which he holds today.
- **Ebrahim Raisi:** He was the deputy prosecutor general of Tehran in 1988 and a member of the Tehran “death commission”. He was later the prosecutor general of Tehran between 1989 and 1994, the first deputy head of the judiciary from 2004 to 2014 and the country’s prosecutor general from 2014 to 2016.
- **Mohammad Hossein Ahmadi:** He was the Shari’a judge of Khuzestan province in 1988 and a member of the Khuzestan “death commission”. He is currently a member of the Assembly of Experts. For nearly a decade in the 2000s, he was also the head of the body in charge of selecting and appointing judges across the country.
- **Mostafa Pour Mohammadi:** He was the representative of the ministry of intelligence in the “death commission” in Tehran. He was later the minister of justice between 2013 and 2017.

Amnesty International has called for independent and impartial criminal investigations into these extrajudicial executions and for anyone against whom there is sufficient admissible evidence to be prosecuted in civilian courts in proceedings that conform to international fair trial standards and do not involve seeking or imposing the death penalty.

Given that there is no prospect for justice for victims of these crimes in Iran, Amnesty International has called for the UN to set up an independent investigation into the extrajudicial executions and enforced disappearances to establish the truth, enable prosecutions of those suspected of responsibility and ensure that survivors and families of victims receive reparation.